

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Pictsweet Company f/k/a Brownsville Warehouse, LLC)	
	Map 94, Parcel 15.03)	
	Map 94, Parcel 15.03P, S.I. 001)	Haywood County
	Commercial Property)	
	Tax years 2003, 2004, 2005, 2006, 2007)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

Parcel No. 06-094-015.03 (real property):

<u>Tax Year</u>	<u>Appraised Value</u>	<u>Assessed Value</u>
2003	\$15,196,800	\$6,078,720
2004	\$15,196,800	\$6,078,720
2005	\$15,195,400	\$6,078,160
2006	\$15,195,400	\$6,078,160
2007 ¹	\$16,448,300	\$6,579,320

Parcel No. 06-094-015.03P-001 (personal property):

<u>Tax Year</u>	<u>Appraised Value</u>	<u>Assessed Value²</u>
2003	\$1,930,943	\$ 555,764
2004	\$3,637,159	\$1,040,737
2005	\$2,640,288	\$ 755,492
2006	\$2,098,615	\$ 580,792
2007	\$3,019,949	\$ 905,985

Appeals have been filed on behalf of the taxpayer with the State Board of Equalization.

The undersigned administrative judge conducted a hearing of this matter on February 27 and 28, 2008 in Jackson. The appellant, Pictsweet Company ("Pictsweet"), was represented by attorneys Garry K. Grooms and Samuel B. Zeigler, of Stites & Harbison, PLLC (Nashville). Haywood County Assessor of Property Dare Simpson (the "Assessor") was assisted by Robert T. Lee, Attorney for the State Division of Property Assessments (DPA).

¹Haywood County underwent a reappraisal in tax year 2007.

²In accordance with Tenn. Code Ann. section 67-5-1509(a), the assessed values have been equalized according to the overall Haywood County appraisal ratios adopted by the State Board of Equalization pursuant to Tenn. Code Ann. sections 67-5-1604—1606.

Findings of Fact and Conclusions of Law

Background. These appeals refocus on a cold storage distribution warehouse that was the subject of an ill-fated claim of property tax exemption in the preceding tax year. In Brownsville Warehouse, LLC (Haywood County, Tax Year 2002, Initial Decision and Order, April 29, 2005), the undersigned administrative judge held *inter alia* that the named entity – a subsidiary of Pictsweet which had acquired this facility after the adjournment of the Haywood County Board of Equalization’s regular session in 2002 – lacked standing to contest the assessment of the property for that tax year. As noted in that decision, Brownsville Warehouse, LLC merged into Pictsweet in 2003.

The 62.32-acre parcel in question is located at 2170 Anderson Avenue (State Route 76) in Brownsville. The subject improvement was originally constructed in 2001 at a cost of over \$13 million. Exhibit 14, p. 43. At that time, the 337,000-square-foot building contained roughly equal amounts of “dry” (cooled) and freezer storage space. In the summer of 2003, Pictsweet – a processor of vegetable products headquartered in nearby Bells, Tennessee – upgraded the facility by converting the dry storage area to freezer warehouse space.³ The total cost of this renovation was approximately \$4 million. Exhibit 3. Pictsweet has continuously occupied and used the entire facility since then.

Brownsville Warehouse, LLC’s \$9,000,000 purchase price included a number of personal property items. Exhibit 1. The actual consideration allocated to the real property on the special warranty deed (dated September 4, 2002) was \$8,500,000. Exhibit 2. In July, 2006 – some three years after initiating the first of the above-styled appeals – Pictsweet commissioned appraisals of the subject real property by Commercial & Industrial Appraisal Services, Inc. (“C & I”), of Germantown, Tennessee. State Certified General Real Estate Appraisers Craig A. Johnson and Todd Glidewell, MAI completed their appraisal reports for tax years 2003 through 2006 in September, 2006. They estimated the market values of the fee simple interest in the real property on the January 1 effective dates of their appraisals to be as follows:

<u>Tax Year</u>	<u>Market Value</u>
2003	\$ 9,400,00
2004	\$10,100,000
2005	\$10,300,000
2006	\$10,500,000

Exhibits 15—18.

³Presently, the subject improvement contains 314,888 square feet of freezer space. Exhibit 15, p. 10.

Subsequently, on April 10, 2007, C & I transmitted an appraisal report on the subject real property for tax year 2007 to Pictsweet's legal counsel. The value conclusion reached in that report was \$10,600,000. Exhibit 19.

Each of C & I's appraisal reports contained the following statement:

The following items are considered to be real estate and/or real estate related fixtures, that would be required for the continued operation of this cold storage distribution warehouse; dock equipment such as levelers / seals / bumpers, compressors, evaporators, gas alarm, high temperature pumping package, low temperature pumping package, general refrigeration piping tanks, the computer room HVAC, emergency generator fuel tank, air compressor system, emergency generator, emergency lights and exit signs.

Yet the specified items had been listed on Pictsweet's tangible personal property schedules for this business location from tax years 2003 through 2006. Based on the quoted statement, Pictsweet deleted these items from its amended 2006 and original 2007 personal property returns. Exhibit 4. The Assessor refused to accept the values claimed on either of those filings. She and the county board of equalization also made no changes to the certified values of the real property in question.

The Competing Appraisals. The appraised values of the subject land (\$438,000 in tax years 2003 and 2004; \$436,600 in tax years 2005 through 2007) were not materially disputed. Mr. Glidewell, who was called as an expert witness for the taxpayer, endeavored to apply all three generally recognized approaches to the valuation of property in the C & I appraisal reports. In his *Marshall Valuation Service* cost approach for tax year 2006, he estimated the replacement cost of the improvements less physical deterioration to be \$13,543,104. Mr. Glidewell attributed the sizable disparity between that figure and the values indicated by his sales comparison and income capitalization approaches (\$10,400,000 and \$10,500,000, respectively) to economic obsolescence. In his view, the loss in value from that form of depreciation could be measured by capitalizing the difference between the net operating income per square foot necessary to recoup the development costs (\$5.12) and the supposed market rent per square foot for the property (\$3.34). Despite the limited market for cold storage facilities, Mr. Glidewell placed most weight on the sales comparison approach.

State Division of Property Assessments (DPA) Regional Appraisal Supervisor M. Ray Weatherly, TMA testified on the Assessor's behalf. The popular DPA veteran opined that the market value of the real property in question as of January 1, 2007 was \$12,500,000. According to his analysis:

This value would be applicable for each of the tax years 2007 through 2003. The value for 2003 would be somewhat less due to the modifications made in 2003, possibly as much as 10%, which would indicate a value of \$11,250,000.

Exhibit 22, p. 10.

Though based on the same third-party source (Marshall and Swift), Mr. Weatherly's cost approach yielded a considerably higher indication of value (\$18,800,000).⁴ However, like Mr. Glidewell, he considered the sales comparison approach to be most appropriate for this cold storage facility. All seven of Mr. Weatherly's comparable sales were selected from C & I's various appraisals of the subject property – including one which had been performed the year before the renovation project by other members of the firm for a prospective lender. Exhibit 14.

Lacking what he deemed to be sufficient market rental data for a cold storage facility consisting mostly of freezer space, Mr. Weatherly did not attempt an income approach.

Contentions of the Parties. Pictsweet seeks adoption of the opinions of value expressed in C & I's appraisal reports for each of the tax years under appeal. The taxpayer also requests that the present valuations of the tangible personal property be reduced by the total depreciated original cost of the items listed on the original 2003–2006 schedules but later identified in C & I's appraisals as real property. In addition, Pictsweet contends that certain personal computers and printers allegedly “in service at time of acquisition” (Exhibit 9) were wrongfully assessed to the company.

The Assessor resists all of the above claims, as well as the reported valuation of the “supplies” on the premises at a mere \$20.

Applicable Law. As defined in Tenn. Code Ann. section 67-5-501:

(2) “Commercial and industrial tangible personal property” includes personal property, such as goods, chattels and other articles of value which are capable of manual or physical possession, and machinery and equipment which are:

- (A) Used essentially and principally for the commercial and industrial purposes for which they are intended; and
- (B) If affixed or attached to real property, can be detached without material injury to such real property.

(7) “Personal property” includes every species and character of property which is not classified as real property.

(9)(A) “Real property” includes lands, tenements, hereditaments, structures, improvements, movable property assessable under section 67-5-802, or machinery and equipment affixed to realty, except as otherwise provided for in this section, and all rights thereto and interests therein, equitable as well as legal.

(12) “Tangible personal property” includes personal property such as goods, chattels, and other articles of value which are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any

⁴Compared to the amount shown in C & I's appraisal for tax year 2007 (Exhibit 19, p. 64), Mr. Weatherly's estimated replacement cost was about 25% higher. Further, while acknowledging at the hearing that the subject property may suffer from economic obsolescence, he made no allowance for that form of depreciation in his cost analysis.

real property, and the value of which is intrinsic to the article itself.

State Board Rule 0600-5-.09(1) prescribe several criteria for distinguishing between real and personal property.

Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

As the party appealing from the decisions of the county board of equalization, Pictsweet has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Analysis.

Personal Property:

Real or Personal Property? The evidence of record unmistakably favors the taxpayer's position on the classification issue. Indeed, of the items in question, Mr. Weatherly doubted only whether the emergency generator and emergency generator fuel tank would properly be considered building components. The testimony of Pictsweet officials Carl Gruenewald and Allen Watts satisfactorily demonstrated that even those installations are reasonably necessary for continuation of what the parties agreed is the highest and best use of the subject land as improved. Since commercial and industrial tangible personal property is assessed in this state at a *lesser* percentage of its market value (30%) than commercial and industrial real property (40%), such persons would seemingly not have been predisposed to this viewpoint.

Computers and Printers. By the taxpayer's own admission, the 11 personal computers and 7 printers in question remained on the site and available for commercial use until sometime in 2004. Thus not until tax year 2005 did those items cease to be reportable and assessable.

Supplies. In view of the magnitude of Pictsweet's operations at this location, its stock of supplies there would more probably be worth the \$2,000 amount determined by the Assessor than the minimal (\$20) value reported by the taxpayer.

Real Property:

Cost and Income Capitalization Approaches. Respectfully, even assuming the accuracy of Mr. Glidewell's replacement cost estimates, the administrative judge cannot accord significant weight to his cost approaches. The roughly 25% deductions for external

obsolescence were mainly predicated on an income approach which, in his own words, "adds little weight to the final value determination." Exhibit 15, p. 105. Mr. Glidewell's lack of confidence in the income approach was certainly understandable. "Due to the special use nature of the improvements," he observed, this facility "would not be classified as a typical investment property." *Ibid.* Further, most of his market rent comparables had much less freezer space than the subject; and none of the four Memphis-area improved sales from which Mr. Glidewell primarily derived his overall capitalization rate (11.00%) was a cold storage facility. These weaknesses were compounded by the treatment of property taxes – the largest single expense item – as an operating expense in the appraiser's *pro forma*. According to an authoritative textbook:

When the income approach is used to determine the property value for tax purposes, the practice of using property taxes as an expense is based on a preconceived value and discredits the whole approach....The problem can be resolved by developing an effective tax rate and by including the rate in the capitalization rate for the property being appraised.

International Association of Assessing Officers, *Property Assessment Valuation* (2nd ed. 1996), p. 240.

Mr. Weatherly, for his part, essentially disregarded the value indicated by his cost approach. Hence the outcome of Pictsweet's real property assessment appeals ultimately depends on the relative merits of the parties' sales comparison approaches.

Sales Comparison Approaches. Mr. Weatherly's nonperformance of separate appraisals of the subject property for tax years 2003 through 2006 was somewhat mitigated by the fact that five of his seven chosen comparables were sold before January 1, 2003.⁵ But the fact remains that the interior of the facility was significantly different at that point in time. Notwithstanding Mr. Weatherly's qualifications and experience, the administrative judge cannot put much stock in a retrospective estimate of how much less this property was "possibly" worth prior to the renovation.

Two of Mr. Weatherly's three highest adjusted comparable sale prices (Kraft Foods in Winchester, VA: \$44.29 per square foot; Associated Grocers in Kent, Washington: \$49.38 per square foot) were attributable to cold storage facilities in other parts of the country. More troublingly, Mr. Weatherly did not adjust the Kraft Foods property for its admittedly superior location (next to three food processors) and advantageous long-term lease; nor was his +40%

⁵Generally, sales, listings, or other events occurring *after* the assessment date for the tax year(s) under appeal are not relevant to the valuation of the property in question. See Acme Boot Company & Ashland City Industrial Corporation (Cheatham County, Tax Year 1989, Final Decision and Order, August 7, 1990). Mr. Weatherly made no time adjustments to the comparable sale prices on the rationale that "[i]ndustrial properties take lengthy periods of time to market and sales prices do not typically follow cost indexes." Exhibit 22, p. 6.

adjustment for the age and condition of the Associated Grocers property adequately substantiated. As counsel for the appellant pointed out, if those two fairly distant comparables had been excluded from consideration, Mr. Weatherly's mean and median adjusted sale prices would have dropped under \$31.00 per square foot.

To be sure, Mr. Lee's thorough cross-examination did succeed in exposing some shortcomings in Mr. Glidewell's sales comparison approach – notably, his resort to some foreclosure sales and a lack of upward adjustments for smaller percentages of freezer space. Nevertheless, without perfunctorily deferring to the superior appraisal credentials of this witness, the administrative judge is compelled to conclude that Mr. Glidewell's opinions of value were better supported through independent analysis. Any extent to which the market values of the real property in question may exceed those amounts would likely be offset by the respective equalization factors (appraisal ratios) in the non-reappraisal years.

Order

It is, therefore, ORDERED that the subject property be valued as follows:

Parcel No. 06-094-015.03 (real property):

<u>Tax Year</u>	<u>Appraised Value</u>	<u>Assessed Value</u>
2003	\$ 9,400,000	\$3,760,000
2004	\$10,100,000	\$4,040,000
2005	\$10,300,000	\$4,120,000
2006	\$10,500,000	\$4,200,000
2007	\$10,600,000	\$4,240,000

Parcel No. 06-094-015.03P-SI001 (personal property):⁶

<u>Tax Year</u>	<u>Appraised Value</u>	<u>Assessed Value</u>
2003	\$ 821,997	\$ 236,587
2004	\$ 1,394,734	\$ 399,089
2005	\$ 1,088,116	\$ 311,354
2006	\$ 819,478	\$ 226,791
2007	\$ 706,299	\$ 211,890

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee

⁶See Exhibits 7—9.

Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of April, 2008.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Garry K. Grooms and Samuel B. Zeigler, Attorneys, Stites & Harbison PLLC
Robert T. Lee, General Counsel, Comptroller of the Treasury
Dare Simpson, Haywood County Assessor of Property